IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVL APPLICATION No. 8640 OF 2007
(In A.O. No.73 of 2007)

Balkisan Tejmal Mundada
v.
Rajkumar Radhshyam Rathi & anr.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.A.S.Chandurkar Advocate for the Applicant/Res.no.1.
Mr.Anil Kumar Advocate for N.A./appellant.

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CORAM: A.B. CHAUDHARI, J.
DATED : 30th NOVEMBER, 2007.

This application has been taken out by respondent no.1 for clarification of the judgment and order dated 26.9.2007 rendered by this Court. Learned counsel for the applicant/respondent no.1 argued that the trial Court had rejected the application for grant of temporary injunction in entirety. He then argued that even the prayer in the trial Court did not at all relate to any injunction sought against the sale-deed as such though

in the suit there is a prayer for cancellation of sale-deed on the ground of fraud. He then argued that this Court had no occasion to make any comments on the prima facie nature of the sale-deed.

2. Insofar as possession is concerned, the appellant himself admitted that the respondents were in possession and acting on that admission this Court confirmed the finding of the trial Court. In this background, the learned counsel submits that since the sale-deed has been obtained by respondent no.1 in his favour subject to its validity in the suit which would be gone into, there was no occasion for the trial Court or this Court to record any prima facie finding about the nature of the sale-deed as to whether the entries based thereon could be taken in revenue record or not. He then argued that this Court did not mention anything about the same and still the obstruction about

mentioning of ownership is being made.

3. *Per contra*, Mr.Anil Kumar, learned counsel for the non-applicant argued that the sale-deed is an act of fraud and this is the subject matter of the suit. He submitted that as on today it is the appellant whose name exists on the revenue entries as owner of the suit property and, therefore, the same *status quo* should be continued.

4. Seen the judgment and order made by this Court on 26.9.2007. Considered the contentions raised by the learned counsel for the parties. To my mind, the ultimate finding regarding cancellation of sale-deed on the ground of fraud would be the subject matter of the suit. Insofar as the sale-deed obtained by respondent no.1 is concerned, there is no order putting the same under suspension nor any such prayer was made in the trial court. Therefore, it is clarified that the sale-deed obtained by respondent no.1 whether

obtained by fraud or otherwise, can be taken into consideration by the revenue authorities for the purpose of making entries regarding ownership independently and the same has nothing to do with the prima facie view taken by the trial Court as well as this Court in the aforesaid appeal. It is made clear that the mutation entry, if taken on the basis of the sale-deed obtained by respondent no.1, the Revenue Authorities shall also make an entry that the same is subject to decision of pending Civil Suit No.22/07. Civil Application disposed of.

JUDGE

/TA/